IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1045 OF 2005
IN
EXECUTION APPLICATION NO.37 OF 2005
IN
CASE NO.1990 K 528

Arvind Jeram Kotecha — Original Claimant

versus

Prabhudas Damodar Kotecha — Decree Holder

Shri V.V.Tulzapurkar with Mr.Munshi i/by A.R.Vaidya for claimant.

Mr.D.R.Zaiwala with J.J.Thakkar for defendants

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 19.04.2006

DATE OF PRONOUNCING THE JUDGEMENT : 05.06.2006

JUDGEMENT :

1. The Chamber Summons is taken out for the following reliefs :-

(a) That leave be granted to the Defendant/Decree holder to execute Execution proceedings against the Plaintiff/Judgement Debtor for recovery

of the sums due to the Defendant from the Plaintiff, more particularly set out in the Execution Application under the judgement dated 22.1.1999 of the Hon'ble High Court of Justice of United Kingdom, Queen's Bench Division passed in Case No.1990 K 528 and the final costs certificate dated 11.11.2004 and additional certificate dated 17.1.2005 issued by costs officer, High Court of Justice Queen's Bench Division;

(b) That notice under Order XXI, Rule 22(1)(b) of the Civil Procedure Code be dispensed with;

(c) Such other and further orders and reliefs as may be necessary in the facts and circumstances of the case may be granted."

2. The Chamber Summons is by the Original Defendant. It is directed against the Claimant/Original Plaintiff.

3. It is contended that the Chamber Summons is to seek leave to execute the decree dated 22nd January 1999 and Final Costs Certificate dated 11th November 2004 along with Additional Certificate dated 17th January 2005 of the Queen's Bench of High Court of Justice (United Kingdom) in Case No.1990 K 528.

4. This case was filed by the claimant/original plaintiff Arvind Kotecha against Prabhudas Damodar Kotecha (Original Defendant) (hereinafter

for short referred to as "Arvind and Prabhudas").

5. The case was filed for an order of release of a fund held in the joint names of Arvind and Prabhudas as also for damages.

6. On 25th February 1993, Prabhudas submitted to a consent order in the said proceedings whereby, inter alia, the fund was ordered to be released to Arvind and an order directing damages to be assessed was passed, also by consent.

7. In February 1994 Arvind applied in pursuance of the consent order and prayed for assessment of damages. The Court assessed the damages as "NIL". The Court directed that the judgement be entered for the defendant with costs. The costs were to be "taxed" if not agreed and that Arvind should pay Prabhudas the same. A copy of the judgement and order dated 22nd January 1999 is annexed as Annexure-I to the affidavit in support of present Chamber Summons.

8. A detailed assessment and quantification of the costs was undertaken by the Cost Officer. Thereafter, the abovementioned Final Cost Certificate dated 11th November 2004 was issued,

a copy of which is Annexure-II. The direction is issued to Arvind and the quantum is f.57175.25 plus interest thereon @ 8% p.a. as more particularly set out in the certificate. In other words, Arvind should pay this amount to Prabhudas.

9. The interest due under the final cost certificate has been computed at the rate of f.9159.73. The additional certificate for interest is also issued on 17th January 2005. The computation of costs and interest payable under the order, is as set out hereinbelow.

Costs as per the bills of costs =	f 39,272.63
Court Fees of the proceedings	f 1,728.75
Costs of the proceedings of assessment of costs	f 12,648.87
Costs of the detailed assessment	f 3,535.00
	f 57,175.25

Computation of Interest

On the sum of f 39,272.63 from 22.1.1999 except interest shall not run for 1184 days

On the sum of f 1,728.75 from 29.4.2004

On the sum of f 12,648.87 from 29.4.2004

On the sum of f 3,525.00 from 26.10.2004

Interest upto 31.12.2004 =	f 9,159.73

and thereafter at the rate of f 12.53 per day until payment."

10. The affidavit in support sets out the manner in which the proceedings before the Cost Officer went on and it is then contended that against the order, final certificate as also the additional certificate, no appeal has been preferred by Arvind. Therefore, the proceedings are final.

11. Since the order and decree remained unsatisfied and Arvind is residing in India, the defendant Prabhudas has approached this Court seeking its assistance for execution of the decree and order in his favour. The execution application is filed for such enforcement and execution. The basis for institution of execution application, is reciprocal arrangement between United Kingdom and India in the matter of execution of decrees and judgements of superior Courts in both countries.

12. As Prabhudas seeks enforcement and execution of the decree, present Chamber Summons is taken out and in paras 14 to 16 it is prayed that Warrant of Attachment be issued and further steps be taken for satisfaction of the judgement and decree.

13. Paragraph 17 on page 11 of the affidavit in support of Chamber Summons reads thus:-

> 17. I submit that the notice under Order XXI Rule 22(1)(b) of Civil Procedure Code be dispensed with as I apprehended that the Claimant/ Judgement Debtor (Mr.Arvind Jeram Kotecha) may create third party interest in the said properties and/or shall attempt to conceal, divert, alienate or remove the properties in order to delay and defeat my claim, which will frustrate the said Judgement and Order dt.22.1.1999 and Final Costs Certificate dated 11.11.2004 and Additional Certificate dated 17.01.2005."

14. Shri Zaiwala - learned senior counsel appearing for Prabhudas submits that adjudication by the Foreign Court with regard to claims of Arvind ended in an order against Arvind insofar as damages is concerned. However, the Court proceeded to direct that Arvind will have to pay costs to Prabhudas and if quantification of such costs is not agreed between Arvind and Prabhudas,

then such quantification must be done by the Competent Officer in accordance with the Rules framed in that behalf. He submits that the order is upon an adjudication and the same being composite, it partakes the character of a decree in favour of Prabhudas. It is only the calculation and computation which is left to be done by the Competent Officer, if there is no agreement between the parties. That order and quantification is final. It is a decree, therefore, provisions of Section 44A of the CPC are applicable. This is a decree of a Superior Court and is capable of being enforced and executed in India in the light of the fact that Arvind is within the jurisdiction of this Court and the moveable properties belonging to him are also situate within the jurisdiction of this Court. There cannot be any objection as the decree is on merits. He submits that leave under order XXI, Rule 22 of CPC is capable of being dispensed with. The execution and/or orders passed during the course of the same, are neither invalid, void nor illegal merely because there is an omission to apply for and grant leave under this provision. In any event, in the present case, application for dispensation is made and the averment in that behalf is set out in the

affidavit in support. Prabhudas being a senior citizen, this Court should not drive him out at this stage by directing taking out of appropriate proceedings and apply for leave therein.

15. Alternatively, Shri Zaiwala submits that what can be urged by Arvind in opposition to grant of leave under Order XXI, Rule 22, is being urged on affidavit in these proceedings. Self-same pleas are going to be raised in an application for grant of leave under Order 21, Rule 22 of CPC.. Therefore, such objections and pleas having been raised, this Court should pronounce upon their legality and validity in these proceedings. In his submission, technicalities should not defeat justice. Rather, all technical requirements and procedures have to be utilised to do justice. For all these reasons, Chamber Summons be made absolute.

16. Shri Zaiwala relied upon Rules prevailing in U.K. which set out the procedure for detailed assessment of costs and default provisions. In his submission, these Rules are applicable to the adjudication which was undertaken by the Superior Court in England. He places reliance upon identical Rules and Practice prevailing on the

Original Side of this Court with regard to payment of costs.

17. In support of his submission that Notice under Order XXI, Rule 22 is capable of being dispensed with, Shri Zaiwala has placed strong reliance upon a decision of Kerala High Court reported in AIR-1997-Kerala-40 (Jaseentha Joseph Vs. Louis Neeklause, Cheppallil St. Joseph House, Patathanam Ward and others) and a Division Bench Judgement of Calcutta High Court reported in AIR-1951-Cal-476 (Chandra Nath Bagchi Vs. Nabadwip Chandra Dutt and others).

18. In support of his contention that order as to costs is also a decree, Shri Zaiwala places reliance upon Mulla's Commentary on CPC and a Division Bench decision reported in 55-BLR-614 (Aspee India Ltd. Vs. M.L.Dahanukar & Co. Ltd.) and a Single Judge decision reported in AIR-1932-Bom-378 (Rustomji and Ginwala Vs. Fazal Rahim and others).

19. On the other hand, Shri Tulzapurkar - learned senior counsel appearing for Arvind has contended that the Chamber Summons is misconceived, not maintainable and deserves to be

dismissed. His submission is that Section 44A of the CPC makes provisions of Order XXI, Rule 22 applicable to enforcement and execution of Foreign Decrees. There is nothing which permits dispensation of this requirement which is mandatory. He submits that Decree- holder cannot deprive the judgement debtor herein of an opportunity to contest the application for leave under Order XXI, Rule 22 of CPC.. Placing reliance upon the phraseology of Order XXI, Rule 22 of CPC Shri Tulzapurkar submits that provisions enact a code in itself while considering applications for grant of leave. A show cause notice is contemplated to the defendant-judgement debtor herein. He submits that Sub Rules of Order XXI, Rule 22 do not in any manner indicate that provision for leave is not mandatory.

20. Shri Tulzapurkar submits that Sub Rule 3 which has been incorporated by Bombay/ Maharashtra Amendment, cannot be read to mean that notice is capable of being dispensed with straight way. He submits that no case is made out for invocation of Sub Rule 2 of Order XXI, Rule 22. He submits that the stage of Sub Rule 3 has not yet reached. There is no urgency

inasmuch as the final order is dated 11th November 2004. In the mean while, an application was made by way of Judge’s Order but no details pertaining thereto are provided by Prabhudas. The Chamber Summons is taken out in June 2005 and served upon Arvind in September 2005. Paragraph 17 of the affidavit in support, does not make out a case for dispensation of leave under Order XXI, Rule 22. There is a mere apprehension. No details are forth-coming. For this reason the application deserves to be dismissed. In any event, Prabhudas is not precluded from enforcing and executing the decree merely because there is insistence on compliance with Order XXI, Rule 22 of CPC..

21. Shri Tulzapurkar was at pains in pointing out that the requirement of notice under Order XXI, Rule 22 is something which can be said to be a step-in-aid in execution. It is a vital and important step and not a mere technical requirement. He submits that the property, which is allegedly apprehended of being dealt with, is in fact not dealt with by Arvind. Therefore, Prabhudas should be directed to comply with Order XXI, Rule 22 of the CPC and the Chamber Summons be dismissed with this direction alone.

22. Without prejudice and alternatively so also proceeding on the basis that this Court is inclined to consider all objections to the execution of decree in question, at this stage itself, Shri Tulzapurkar submits that the order sought to be enforced cannot be said to be a decree. In his submission, the requirement of Section 44A is that, firstly, execution must be of a decree. Secondly, it must be by a Court in Reciprocating Territory. Thirdly, it should be a Superior Court. In Shri Tulzapurkar's submission, in the present case, United Kingdom may be a reciprocating territory but neither is the order of payment of costs a decree nor it is rendered or delivered by a Superior Court. He submits that this objection goes to the root of the matter and such pleas have been categorically raised by Arvind on affidavit. These pleas have not been countered or denied. Therefore, the application/Chamber Summons must be dismissed.

23. Shri Tulzapurkar took me through all orders and proceedings before the Court in U.K.. He submits that on a plain reading of these orders it is clear that the claim for damages of Arvind is rejected. The plea of payment of costs is

rejected by the Court. The Court has not made any order for payment of costs. That order is passed by the Court Officer who is on par with a Taxing Master. He submits that the quantification/figure which is determined by this Court Officer/Taxing Master, is being pushed through by Prabhudas as an order of a Court and is sought to be enforced and executed as a Decree of the Superior Court. He submits that this is not an order of the Superior Court.

24. Assuming and without admitting that all ingredients of Section 44A(1) are satisfied, Shri Tulzapurkar submits that Explanation-II below Section 44A cannot be ignored. The word "decree" is exhaustively defined in this explanation to mean a decree of a Superior Court under which a sum of money is payable. However, the latter part states clearly that "not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty". Shri Tulzapurkar submits that payment of costs is not what is contemplated in this explanation. In any event, the amount which is quantified as a final figure includes taxes (VAT) and that is clearly outside the purview of the term "decree", as defined in this explanation. He invites my

attention to Exhibit-2 to the affidavit in reply (page 35) in this behalf.

25. The other alternate submission of Shri Tulzapurkar is that the term "decree" as appearing in the explanation, is not any decree or judgement but clearly means the formal expression of an adjudication which, so far as the Court expressing it, conclusively determines rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final. Shri Tulzapurkar’s submission is that there is nothing in the order pertaining to payment of costs which would indicate that it is a judgement rendered upon a matter directly adjudicated between parties. He submits that once decree means an expression of adjudication which conclusively determines the rights of parties with regard to all or any of the matters in controversy in the suit, then by no stretch of imagination can it be said that mere direction to pay costs, is contemplated by the expression "decree" appearing in Section 44A as well as Section 2(2) of the CPC.. In his submission, these terms appearing in the explanation below Section 44A and in Section 2(2) are not in any way conflicting or

running contrary to each other.

26. Therefore, present order cannot be said to be a decree on the merits of the case. He submits that as far as direction to pay costs is concerned, it is not a judgement by itself. It is part of judgement and direction to pay costs is entirely discretionary. The Court awards costs in it's discretion. There is no adjudication involved while exercising this discretion. The main matter or controversy and the discretion exercised while directing payment of costs, are two independent matters. No party has a vested right insofar as direction of costs. Therefore, the order of payment of costs is not a decree.

27. In support of the above propositions, Shri Tulzapurkar places reliance upon following decisions :-

i) AIR-1928-Calcutta-60 (Manmatha Nath Ghose Vs. Mt.Luchmi Debi and others)

ii) AIR-1986-Himachal Pradesh-3 (Gauri Lal and others Vs. Smt.Sujham Devi)

iii) 1996(2)-Mh.L.J.-858 (Laxman Bala Surve and others Vs. M/s.Posh Builders, Bombay and another)

iv) AIR(33)-1946-Madras-296 (Gudemetla China Appalaraju Vs. Kota Venkata Subba Rao)

v) AIR-1932-Lahore-649 (Mehar Singh Vs. Ishar Singh)

vi) AIR-2001-SC-2134 (M/s.International Woollen Mills Vs. M/s.Standard Wool (U.K.) Ltd. with M/s.Standard Wool (UK) Ltd. Vs. M/s.International Woollen Mills)

vii) AIR-1920-Patna-622 (Golab and others Vs. Janki Kuer)

viii) AIR-1953-Calcutta-13 (Dudhewalla & Co. Ltd. Vs. Govindram Rameshwarlal)

ix) AIR-1953-Calcutta-15 (N.P.Paul Vs. Steel Products Ltd.)

x) 1962(2)-SCR-1962-452 (Tirumalachetti Rajaram Vs. Tirumalachetti Radhakrishnayya Chetty)

xi) An unreported order passed in Execution Application No.205 of 1997 in Notice No.1772 of 1997 along with other matters of this Court (Coram : Smt.Nishita Mhatre, J.) dated 8th August 2003.

xii) An unreported order passed in Notice of Motion No.1400 of 2004 in Appeal No.1123 of 2003 and another matter by this Court (Coram : H.L.Gokhale and S.U.Kamdar) dated 13th April 2004.

xiii) 1996(2)-Mh.L.J.-858 (Laxman Bala Surve and others Vs. M/s.Posh Builders, Bombay and another)

xiv) An unreported order of this Court in Chamber Summons No.812 of 2003 in Notice No.571 of 2003 (Coram : P.V.Kakade, J.) dated 4th September 2003.

xv) An unreported order of this Court in Appeal No.819 of 2003 in Chamber Summons No.812 of 2003 (Coram : R.M.Lodha and Smt.Nishita Mhatre, JJ.) dated 3rd November 2003.

xvi) 23(XXIII)-BLR-189 (In case of Jagannath Vasudeo Pandit

28. In all fairness, Shri Tulzapurkar submits that some what similar question fell for consideration of a learned Single Judge of this Court (Mrs.Mhatre, J.) in Execution Application Nos.204 and 205 of 1997 and in a judgement delivered on 8th August 2003, she rejected the objections of present nature. However, Appeal No.1123 of 2003 challenging that decision/ judgement, is admitted by a Division Bench of this Court and on 13th April 2004 the order of Mrs.Mhatre, J. has been stayed. Hence, no reliance can be placed on this judgement. For the above reasons, in his submission, this Chamber Summons must be rejected.

29. With the assistance of the learned Senior Counsel I have perused the Chamber Summons, the affidavit in support, reply and rejoinder. I have perused the annexures thereto including the consent order dated 25th February 1953, the judgment dated 22nd January 1999 and the certificates. I have also gone through the statutory provisions and decisions brought to my notice.

30. For properly appreciating the rival contentions, it is necessary to refer to Sections 44A and 13 of CPC so also Order XXI, Rule 22 of the Code. For ready reference, these provisions are reproduced hereinbelow :-

> **"44A. Execution of decrees passed by Courts in reciprocating territory.-**
>
> (1) Where a certified copy of a decree of any of the superior Court of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.
>
> (2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.
>
> (3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.
>
> (Explanation I - "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes

of this section, and "superior Courts" with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation II - "Decree" with reference to a superior Court means any decree or judgement of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgement.)

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Section 13 : When Foreign judgement not conclusive.-

A foreign judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the fact of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

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ORDER XXI - Execution of Decrees and Orders.-

Rule 22 : Notice to show cause against execution in certain cases.-

(1) Where an application for execution is made-

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44-A, or

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice."

A bare perusal of Section 44A which has been substituted by Act of 8/1937, by Act of 1941 and amended by Act 71/1942 , would demonstrate that where a certified copy of a decree of any of the Superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. However, Section 44A itself provides that a certificate must be filed and its nature must be such as is contemplated by Section 44A(2). So also, from the stage of filing of the certified copy of the decree in a District Court in India, the provisions of Section 47 shall apply to the proceedings before the District Court. A power has been conferred on the District Court to refuse execution of any decree of the Foreign Court, if it is shown to the satisfaction of that Court (District Court) that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13 of CPC..

31. Explanation-1 is not necessary to be referred for our purpose. Explanation-2, however, speaks of the term "decree" to mean any decree or judgement of a Superior Court under

which a sum of money is payable. In other words, a money decree or a judgement of a Court in Foreign Reciprocating Territory for payment of money, is executable and enforceable, provided, the sum of money should not be in the nature of a tax or charges or of like nature or in respect of a fine or other penalty. The later part of Explanation-II is also not material for our purpose.

32. Section 13, which carves out exceptions to the conclusiveness of a Foreign Judgement, is also relevant in this case. The judgement of a Foreign Court as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title is binding and conclusive, except if it is not pronounced upon by a Court of competent jurisdiction, not being given on the merits of the case, where it appears on the face of the proceedings that it is founded upon an incorrect view of international law or refuses to recognise the law of India in cases in which such law is applicable, the proceedings in which the judgement was obtained are opposed to natural justice, where it has been obtained by fraud, where it sustains a claim

founded on breach of law in force in India. Thus, unless it is proved that exceptions are attracted the foreign judgement is conclusive and binding.

33. In other words, if the conclusiveness is challenged on any of the above grounds and such challenge is substantiated by party raising it, then the Foreign Judgement is not conclusive. Otherwise, the presumption is that Foreign Judgement is conclusive and capable of being enforced and executed in India.

34. In AIR-2000-SC-2826 (M.V.Al. Quamar Vs. Tsavliris Salvage (International) Ltd. and others, this is what the Hon'ble Supreme Court observes with regard to enforcement of Foreign Decree :-

> 49. Section 44-A thus indicates an independent right, conferred on to a foreign decree-holder for enforcement of its decree in India. It is a fresh cause of action and has no co-relation with jurisdictional issues. The factum of the passing of the decree and the assumption of jurisdiction pertaining thereto, do not really obstruct the full play of the provisions of Section 44-A. It gives a new cause of action irrespective of its original character and as such it cannot be termed to be emanating from the admiralty jurisdiction as such. The

> enforcement claimed is of an English decree and the question is whether it comes within the ambit of Section 44-A or not. The decree itself need not and does not say that the same pertains to an admiralty matter neither it is required under Section 44-A of the Code. Though however in the facts of the matter under consideration, the decree has been passed by the High Court of England (a superior Court) in its Admiralty jurisdiction. Registration in this country, as a decree of a superior foreign Court having reciprocity with this country would by itself be sufficient to bring it within the ambit of Section 44-A. The conferment of jurisdiction in terms of Section 44-A, cannot be attributed to any specific jurisdiction but an independent and an enabling provision being made available to a foreigner in the matter of enforcement of a foreign decree."

35. Order XXI, Rule 22 of the CPC provides for notice to show cause against execution in certain cases. One of the cases provided therein is of an application made for execution of a decree filed under the provisions of Section 44A. In other words, a Foreign decree, if sought to be enforced and executed in India, and an application is made to the District Court in India for such relief, then a notice under this provision will have to be issued. The show cause notice calls upon the party/person against whom execution is applied for to show cause as to why the decree should not be executed against him. The proviso to Order XXI, Rule 22(1) is not

applicable in this case.

36. Sub Rule 2 provides that whenever it is brought to the notice of the court that if notice is to be issued under Order XXI, Rule 22 and issue of such notice would cause unreasonable delay or would defeat the ends of justice, then by recording reasons, the requirement of issuance of show cause notice can be dispensed with.

37. In my view, the larger questions posed for my consideration by Shri Tulzapurkar need not be decided in the facts and circumstances of present case. Whether notice is mandatory, whether the same can be dispensed with totally or whether sub- rule 2 can be of assistance in interpreting the requirement of issuance of show cause notice, is something which need not be gone into in this case. Ultimately, a show cause notice is contemplated so that the person against whom execution is applied for, is aware that a decree is being executed against him and that if he has some material to demonstrate that it cannot be executed against him, then, he gets an opportunity to place the same. This aspect is clear if one notices Order XXI, Rule 23 which deals with procedure after issue of notice. The

procedure, upon notice being issued, is that if the person against whom execution is applied for appears before the Court and shows cause to the satisfaction of the court, that the decree should not be executed, the Court shall consider such objections and make such order as it thinks fit. If the person does not appear despite receipt of notice, then the Court is not obliged to wait for him and it shall order that the decree should be executed.

38. Hence, the object of issuance of a show cause notice is to grant opportunity to satisfy the Court that the decree should not be executed. However, as observed above, this aspect need not be gone into in details in the facts of present case. In the facts and circumstances of present case, if shri Tulzapurkar's preliminary objections are upheld, then the decree holder will have to comply with Order XXI, Rule 22 and this Court will make an order under Rule 23 thereafter. It only means that the decree holder will have to take out an application for issuance of notice and serve such application/notice on the judgement debtor- Arvind. Instead, the decree holder has applied for dispensation of notice and the objection of the judgement debtor

is notice should not be dispensed with, as no material is placed in that behalf before this Court. If I reject the prayer for dispensation, then as observed above, the decree holder will take out notice under Order XXI, Rule 22 and thereafter the objections to the execution of the decree, are open for being raised.

39. In the peculiar facts and circumstances of this case when I am considering all objections raised to the execution of the decree in question and as if they are raised in answer to a notice under Order XXI, Rule 22, then I see no purpose being served in relegating the decree holder to a stage where he will have to make an application for issuance of notice and then apply for appropriate orders in execution. In the larger interest of justice and more particularly when no prejudice is caused to the judgement debtor, I do not find any merit in the preliminary objection raised by Shri Tulzapurkar. More so, when I have heard him at length on objections to the execution of the decree in question and when I am dealing with them during the course of this judgement.

40. Now, I propose to deal with the first

objection raised by Shri Tulzapurkar namely the direction for payment of costs is not a decree and that too of a Superior Court. In that behalf, it would be necessary to refer to some facts. Shri Arvind Kotecha, the claimant-original plaintiff on his own showing, applied on 9th March 1990 in Case No.1990 K 528 for damages and for an order to the defendant (Prabhudas) to make and deliver an account of the fund together with all dealings therewith as also for other reliefs more particularly set out in the statement of claim. By a consent order dated 25th February 1993 of the High Court of Justice, Queen's Bench Division, United Kingdom, a judgement was entered against Prabhudas, inter alia, for release of the fund to Arvind and the Court ordered Prabhudas to pay to Arvind damages to be assessed. By the consent order dated 25th February 1993 interest pursuant to Section 35A of the S.C.Act, 1981 was ordered to be assessed along with damages and Prabhudas was ordered to pay costs, to be taxed, if not agreed. A copy of this consent order dated 25th February 1993 is annexed and marked as Exhibit-1 to the affidavit in reply of Arvind to the present Chamber Summons.

41. If I may interrupt narration of further facts, here, it is pertinent and relevant to note that the import of the direction issued in the consent order, is on par with the order which is sought to be enforced and executed by Prabhudas. If damages were to be assessed in favour of Arvind and Prabhudas were to pay the same so also costs, then it is not disputed before me that identical order could have followed in favour of Arvind. The identical procedure of quantification of costs which followed this event, could have been adopted in this case as well. However, merely because the damages were not assessed pursuant to this consent order in favour of Arvind and instead he had been directed to pay costs, which were quantified later on, it is not open for Arvind to urge that the order of costs following the event of rejection of claim/ assessment of damages, is not a decree muchless on the merits of the case.

42. The proceedings before the High Court of Justice, Queen’s Bench Division commenced vide the abovementioned case number. The consent order is clear inasmuch as the judgement was pronounced against the defendant (Prabhudas). It was because there was no defence to the claim of

plaintiff-Arvind. However, the quantum of damages to be paid by Prabhudas to Arvind, was to be assessed separately. This is provided in clause-1 of the consent order. Thereafter, clauses 2 to 5 of the consent order direct Prabhudas to deliver account of the fund held in the Account number mentioned in clause-2 together with all dealings therein within 28 days of the pronouncement of consent order. In clause-3 certain sums were directed to be paid by Prabhudas to Arvind. By clause-4 the name of Prabhudas was to stand deleted from the Account number mentioned in clause-2. As far as interest is concerned, it was to be assessed along with damages and that is how clause-5 of the consent order in the present case reads. Clause-6 of the consent order dated 25th February 1993 reads thus:-

> "The defendant to pay the plaintiff costs of this action, to be taxed, if not agreed."

43. Thereafter, the assessment of damages in the aforesaid case/action was done by the very same Court. The same was an action which was tried before His Honour Judge Rich Q.C. (Sitting as a

Judge of the High Court) in London on 21st and 22nd January 1999. The Judge assessed the damages to be paid by Prabhudas to Arvind as NIL. However, the Judge directed that the judgement should be entered for the defendant (Prabhudas) with costs to be taxed, if not agreed. The order dated 22nd January 1999, copy of which is annexed as Exhibit-2 (Page 31) of the affidavit in reply, reads thus :-

IN THE HIGH COURT OF JUSTICE 1900 K 529
QUEEN'S BENCH DIVISION

BETWEEN :

ARVIND JERAM KOTECHA Plaintiff

-and-

PRABHUDAS DAMODAR KOTECHA Defendant

I CERTIFY that pursuant to the Consent Order of Master Foster under Order 37 of the Rules of the Supreme Court the assessment of damages in this action was tried before His Honour Judge Rich QC (sitting as a Judge of the High Court) in London on the 20th 21st and 22nd days of January 1999 and occupied the time of the Court for 11 hours that is to say from 10.30 am to 1.00 pm and 2.00 pm to 4.30 pm on the first day and from 10.30 am to 1.00 pm and 2.00 pm to 4.30 pm on the second day and from 11.00 am to 12.00 pm on the date hereof

AND THE JUDGE having assessed the award of damages at nil

> THE JUDGE DIRECTED that Judgement should be entered for the Defendant with costs to be taxed if not agreed
>
> AND THE JUDGE DIRECTED that the Plaintiff's application for leave to appeal be refused.
>
> DATED the 22nd day of January 1999."

44. To my mind, clause-6 of the consent order dated 25th February 1993 and direction in the order dated 22nd January 1999 is identical. The direction follows trial of an action. The first part of the action/trial resulted in a consent order and latter part of assessment of damages resulted in a judgement which rejects the claim of Arvind for damages to be paid by Prabhudas but at the same time awards costs in favour of Prabhudas to be paid by Arvind. The quantum of costs was to be decided in absence of consent of both sides by the procedure which is laid down in the Rules in that behalf. Therefore, a Bill of Costs of the defendant was prepared, as there was no agreement between Arvind and Prabhudas about quantum of costs. That bill was taxed by the Authorised Officer and he issued a Certificate quantifying the amount of costs. The entire judgment is in favour of Prabhudas and against Arvind. Since Prabhudas succeeded, the Court awarded costs in his favour.

45. There is no substance in the contention of Shri Tulzapurkar that it is the certificate which is sought to be executed and that cannot be done by resorting to Section 44A of the CPC.. In my view, the direction and order to pay costs was already issued in the judgement delivered on 22nd January 1999 rejecting the claim for damages. It is only the quantification and computation of costs which was done by the authorised officer as parties could not arrive at a figure by consent. The judgement and decree drawn pursuant thereto, which is in favour of Prabhudas, is being executed and enforced by him. Explanation-II to Section 44A which is relied upon itself makes the concept of a "Decree" clear. It means any Decree or Judgement of a Superior Court under which a sum of money is payable. The present judgment falls within this definition. Shri Tulzapurkar’s submissions proceed upon the basis that an order for payment of costs is not a "Decree" within the meaning of the said term under the Civil Procedure Code. He places reliance upon Sections 2(2) and 13 in this behalf. However, when it comes to execution of Decrees passed by Courts in Recriprocating Territory, the explanations to Section 44A cannot be brushed aside or ignored by

the Executing Court.

46. In the present case, it is not disputed that U.K. is a Recriprocating Territory and the Court which delivered the judgement is a Superior Court. Therefore, the argument whether it is a decree or not will have to be considered in the backdrop of Explanation-II. For reasons recorded hereinafter and considering this explanation I am unable to accept both contentions of Shri Tulzapurkar. In my view, the foreign judgement is conclusive and binding as also excutable as a decree. Therefore, it will not be proper to uphold the contention of Shri Tulzapurkar to the effect that the direction to pay costs is not a judgement, which can be said to be capable of being enforced and executed.

47. From a perusal of the orders and directions therein, it is clear that Arvind who is Nephew of Prabhudas commenced firstly some litigation in India in 1979. Thereafter, he commenced litigation in England as well. He claimed that certain amount of money is his exclusive property, whereas, Prabhudas claimed that it was subject to a Trust (held for Hindu Family). It is clear that the claim made by Arvind in England

was not contested by Prabhudas. He submitted to a judgement in favour of Arvind but the judgement/consent order delivered on 25th February 1993 did not award damages to Arvind. It directed that certain sums lying in the account with Standard Chartered Bank, be paid over to Arvind. As far as damages are concerned, Arvind was to prove the loss. The assessment of damages was thereafter undertaken. It is not in dispute that Arvind applied for assessment of damages in February 1994. Parties filed affidavit evidence. A trial was conducted for three days and at the end of it Arvind's claim of damages was rejected. In other words, the damages were assessed at NIL. However, Arvind was directed to pay costs to Prabhudas. They were given liberty to arrive at a figure by consent. Since there was no agreement, the matter was taken up by the Authorised Officer in accordance with the Rules. The Rules which have been placed before me by Shri Zaiwalla set out a complete procedure. The title of the part of Rules dealing with the assessment of costs reads thus :-

> "Procedure for Detailed Assessment of Costs and Default Provisions"

Part 47 contains general rules about detailed assessment. The manner in which the assessment has to be done, the officers authorised to do so, the nature of orders that will be passed consequent upon the material produced by both sides in support of their pleas and finally appeals arising out of the orders of authorised court officers are matters which the Rules deal with. I need not advert to each of them in detail because it is not seriously disputed before me that this is the procedure which is adopted for assessment of costs in the English Court.

48. Shri Tulzapurkar’s submissions proceed on the basis that the term "Foreign Judgement" appearing in Section 13 of the CPC contemplates adjudication between parties and the said adjudication must be conclusive as to any matter. The submission proceeds on the basis that the order of costs does not decide any rights of parties, and, therefore, it is not a judgement of the Superior Court. In my view, this submission proceeds upon a misconception of the factual position. In fact, an attempt is made to assail

the conclusions of U.K.Court on merits but that is not permissible in law. This is not an appellate but an Executing Court.

49. In this case the consent order dated 25th February 1993 decided one part of the matter under adjudication before the English Court. it is not disputed before me that this Court is the Superior Court of England/U.K.. There is a part adjudication and the other part pertaining to claim for damages was to be undertaken separately. A direction was issued in that behalf. The consent order dated 23rd February 1993 contains composite directions. These directions include payment of costs.

50. Thereupon, the assessment of damages commenced vide claim made by Arvind in February 1994. That resulted in a judgement dated 22nd January 1999. Once again it is not disputed before me that the judgement and order dated 22nd January 1999 is an outcome of an adjudication by the High Court of Justice - Queen’s Bench Division which is a Superior Court. It rejects the later part of the claim under adjudication and in the same order rejecting the claim it directs that the claimant Arvind should pay costs

to the defendant (Prabhudas). The figure could not be arrived at and that is how in the same order it is provided that if there is no consent between the parties with regard to figure of costs, then assessment thereof must follow. In other words, the judgement rejects the claim for damages and directs payment of costs but leaves the quantification or figure to the authorised officer in case of disagreement between parties.

51. If the entire adjudication before the English Court is seen in this factual background, then it is futile to contend that what is being executed through this Court, is not a decree or judgement arising out of adjudication of a matter between Arvind and Prabhudas.

52. The fallacy in Shri Tulzapurkar’s submission is that he looks at the action or case in isolation and not as a whole. The entire action initiated by Arvind against Prabhudas was adjudicated in stages but is part of continuous process referred above. Two phases or stages of adjudication concluded the trial in the case instituted by Arvind against Prabhudas. Therefore, picking and choosing one diretion which is favourable and ignoring the other which

is not, cannot be permitted. More so, when the adjudication is out-come of a consent order. All directions in the consent order are binding on both sides. The consent order dated 25th February 1993 and the Judgement rendered on 22nd January 1999 have to be considered together. They are delivered in one single case. If all aspects in the action before the English Court are seen and considered as a whole, then the bifurcation sought to be done by Shri Tulzapurkar is impermissible.

53. Permitting Shri Tulzapurkar to divide and bifurcate the judgement and order of the English Court would mean that this Court is failing in its duty to give effect to a foreign judgement which is rendered on the merits of a matter and the decree drawn up pursuant thereto being enforced through the mechanism of this court. Once it is admitted that the judgement and decree is of a Superior Court in United Kingdom and that Court being empowered to direct assessment of costs through an authorised officer, as is done in this Court, then it is not possible to uphold the contentions of Shri Tulzapurkar that the judgement is just a cost sheet and not a Decree of the Superior Court. Such dissection of the

matter is not permissible as that would amount to sitting in judgement over the orders of competent English Court. That is clearly impermissible in law.

54. Once the above conclusion is reached, then it is really not necessary to consider all the judgements which have been brought to my notice by Shri Tulzapurkar on this aspect.

55. Before referring to them one more pertinent aspect of the matter needs to be touched upon. In the consent order dated 25th February 1993 there is a direction to pay interest. That interest has to be also assessed along with damages. Therefore, it is clear to me that the adjudication is a continuing process. It may have been undertaken claimwise. But it is not as if the order and direction in such a process is not a judgement or a decree merely because the sum of money directed to be paid as costs is quantified separately. If the proceedings are not seen in this light but in isolation, then it is likely that the judgment dated 22nd January 1999 and the directions issued thereunder would be defeated and frustrated.

56. The Judgements relied upon by Shri Tulzapurkar on the ambit and scope of Order XXI, Rule 22 are not required to be referred to because I have already clarified this issue in the foregoing paragraphs. In any event, the object and purpose of this Rule is to furnish an opportunity to the person concerned to urge any objection he may have to the executability of the decree. (See 1996{2}Mah.L.J.-858). That aspect is taken care of by me and no prejudice is caused to the claimant/judgment debtor in this case.

57. The judgement very strenuously relied upon by Shri Tulzapurkar and reported in AIR-2001-SC-2134 (M/s.International Woollen Mills Vs. M/s.Standard Woollen Mills) must be seen in the factual background in which it was rendered by the Supreme Court. The Hon’ble Supreme Court was considering an ex-parte decree dated 20th April 1998 passed by the Central London County Court. Apart from the fact that Supreme Court noticed that the decree was ex-parte, additionally, it noticed that the facts on record disclose that the leave to serve the appellant before the Supreme Court was granted after reading the affidavit of the Solicitor for the respondent before the Supreme Court. It is

relying upon this affidavit that a prima facie opinion was formed by the Central London County Court. In the view of Hon’ble Supreme Court, it is after this affidavit was filed that the appellant before the Supreme Court was served. The Solicitor for the respondent before the Supreme Court filed a subsequent affidavit of service on the representative of the Appellant. Thereafter, no documents are tendered nor any evidence led before the London Court and the English Court pronounced the judgement and decree. The Hon’ble supreme Court noted the fact that the ex-parte judgement and decree does not indicate that any documents were looked into and/or whether merits of the case were at all considered. There was no application of mind to the controversy and that is how the Supreme Court observes that the ex-parte judgement and decree of the Foreign Court, is not a judgement on merits. Before me, the complaint is not that the Judgment is ex-parte but is not on merits. The argument that while awarding costs a Court does not decide rights of parties to the litigation is no where made before the Supreme Court. The Supreme Court observes that for a Judgment to be considered as being rendered on merits certain conditions need to be fulfilled.

58. Shri Tulzapurkar places strong reliance upon the observations of Supreme Court at paragraphs 15 to 17. However, in my view, the Hon'ble Supreme Court made these observations in the light of the factual position emerging before it. It is pertinent to note that the Hon'ble Supreme Court does not hold that an ex-parte judgement/decree cannot be a decree on merits. On the other hand, in paragraphs 27 and 28, this is what the Hon'ble supreme Court has observed :-

> "27. Reliance was also placed upon the case of Chintamoni Padhan v. Paika Samal reported in AIR 1956 Orissa 136. In this case it has been held that a judgment on the merits is one which is entered after a full trial of the issues through pleadings, presentation of evidence, and arguments by both sides. It is held that the expression 'judgment on the merits' implied that it must have been passed after contest and after evidence had been let in by both sides. In our view the authority also cannot be said to be laying down the correct law. In a given case it is possible that even though defendant has not entered evidence the plaintiff may prove its case through oral and documentary evidence. If after consideration of oral and/or documentary evidence an ex-parte decree is passed, it would be a decree on merits.
>
> 28. In the case of Trilochan Choudhary vs. Dayanidhi Patra reported in AIR 1961 Orissa 158, the above mentioned decision in Chintamoni Padhan's case (AIR 1956 Orissa 136) has been overruled. In this case it is held that under Section 13(6)

> even an ex-parte judgment in favour of the plaintiff may be deemed to be a judgment given on merits if some evidence is adduced on behalf of the plaintiffs and the judgment, however, brief, is based on a consideration of that evidence. Where however no evidence is adduced on the plaintiffs side and his suit is decreed merely because of the absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case. In our view this authority laid down the correct law."

Further, in para 29 the Hon’ble approves the statement of law in AIR-1958-Kerala-203 which are to similar effect.

59. Before me it is not the case of Arvind that while assessing the damages pursuant to the consent order dated 25th February 1993 no evidence was adduced by him or by Prabhudas. On the other hand, it is undisputed that after opportunity was given to both sides, assessment of damages was done. A trial was held which went on for 11 hours. Arvind could not substantiate his claim for losses and damages. Therefore, it was rejected. It is not open for Arvind to challenge that aspect before me. His claim for damages having been rejected, it was open for him to challenge that order before the Appellate Court, if available in U.K.. Thereupon, the

order of Queen's Bench Division, U.K., if reversed, would have resulted in a decree in his favour. Therefore, summary procedure or a full trial apart, the judgement dated 22nd January 1999 rejecting the claim for damages made by Arvind is a judgement on merits. This is not disputed by Shri Tulzapurkar. Therefore, when the judgement after rejecting Arvind's claim directs payment of costs to Prabhudas and the figure, if not arrived at by consent of parties is to be determined as per rules, then it cannot be said to be a incidental direction. It is also undisputed that full opportunity was given to both sides by the Authorised Officer while assessing costs. Number of documents were filed and taken on record. Thus, a hearing was held before him as well. As observed above, the Judgment is an outcome of adjudication of the claim of Arvind on merits. In other words, when the claim for damages was rejected, it was open for the English Court to award costs and that is done by it in the very same judgement and order. In the facts and circumstances of present case, the composite order is clearly on merits. It was passed in the presence of Arvind as well as Prabhudas. In these circumstances, the judgement of Hon'ble Supreme Court relied upon by Shri

Tulzapurkar, is distinguishable on facts.

60. The other judgements which have been relied upon are also rendered in the peculiar fact situation. In AIR(33)-1946-Madras-296 (Gudemetla China Appalaraju Vs. Kota Venkata Subba Rao) the issue was considered in the light of a compromise decree. An arrangement between the parties was recognised by the Foreign Court and therefore, Madras High Court held that the decision is not on merits. This judgement is also distinguishable. In AIR-1932-Lahore-649 (Mehar Singh Vs. Ishar Singh) once again the facts were that the defendant before the Lahore Court was absent. His advocate withdrew appearance. Thereafter, the judgement was pronounced. It is in that fact situation that the observations relied upon by Shri Tulzapurkar have been made.

61. The reliance on the passages in Halsbury's Laws of England does not carry the matter any further. It is true that the award of costs is a discretionary power of the Court. But that would not mean that in the facts of this case the order to pay costs is not on merits. Once, in the facts before me, it is clear that the Court was undertaking composite adjudication and while

rejecting Arvind's claim for damages, it awarded costs in favour of Prabhudas, it cannot be said that the order and direction rejecting the claim for damages and awarding costs are not linked with each other or part of the same judgement. The merits of the claim in it's totality has been undertaken by the U.K.Court. In this view of the matter, the ratio of the Full Bench decision of Patana High Court reported in AIR-1920-Patna-622 (Golab and others Vs. Janki Kuer) is inapplicable.

62. There is much substance in Shri Zaiwala's contentions on these aspects. In any event, Shri Zaiwala has also relied upon some observations of the above Full Bench Division which are also supported by a commentary of the learned author Mulla to the effect that the order of costs may not be a decree within the meaning of CPC but this proposition is open to question. Everything depends upon facts and circumstances of each case. Ultimately, it must depend upon adjudication of which it is a part. That will decide whether it is a decree or not.

63. As rightly pointed out by Shri Zaiwala, rejection of claim for assessment of damages, is

a decree and this fact is not disputed by Shri Tulzapurkar. It would be apposite, at this stage, to refer to the observations made by a learned Judge (Taiyabjee, J.) of this Court in AIR-1932-Bom-378 (Rustomji and Ginvala Vs. Fazal Rahim and others) which have been heavily relied upon by Shri Zaiwala. They read thus :-

> "At pages 384 and 385 :-
>
> ... ... As this is a case of first impression, I shall deal with all the arguments that have been placed before me. In regard to the date of the decree, it was argued that though it provides for the payment of costs when taxed and noted in the margin, and though taxation took place on 3rd September 1926 and 7th August 1928, yet I must consider the whole of the decree to be complete on the date of the delivery of the judgment because the decree is dated at the end as of the time when the judgment is delivered. The rules of the High Court laying down the practice in regard to the drawing up of decrees are Rr.266 and 267 and the form is at p.228. The true effect of these rules seems to me that every judgment is normally considered to incorporate within itself the provisions laid down in the rules, viz. that a particular part of the judgment or decree shall be determined and worked out by such administrative officers of the High Court as the Taxing Master.
>
> It is not true that the decree bears only the date when the judgment was delivered. It bears several dates. So far as the provision for costs is concerned, it bears the two dates that I have mentioned. The argument for the defendants, on the other hand, was that every part of the decree must be taken to

> date from the main judgment, and to be completely drawn up then; that notwithstanding the directions that the costs shall be paid when taxed and noted, it must be considered that the costs are taxed and noted on the day that the main judgment was delivered.
>
> ... ... In fact, the judgment of the Court is split up into two parts. That part which relates to costs is postponed until the costs are taxed and determined and finally entered in the decree. The Court in anticipation makes an order which will allow of the results of this further determination - a question of fact (viz. what the costs amount to) being incorporated in the Courts judgment. So that, in truth, this part of the judgment is so to say delivered, or at least completed, only when the costs are taxed and noted.
>
> ... ... I cannot accept this argument. It seems to me to be clear that the judgment as regards the costs must be considered to be delivered when the costs are taxed and noted, and the decree as to costs must date from that time. It was argued for the plaintiffs, on the other hand, that S.14, Lim. Act, applied to this matter. The time taken up by the proceedings in execution should in my opinion, if necessary, be deducted from the period of limitation. I think therefore that the plaintiffs must succeed."

64. The decision relied upon by Shri Tulzapurkar of the Calcutta High Court reported in AIR-1953-Cal-13 (Dudhewalla & Co. Ltd. Vs. Govindram Rameshwarlal) is also distinguishable for the reasons set out by me above.

65. The decision of Hon’ble Supreme Court

reported in 1962(2)-SCR-452 (Tirumalachetti Rajaram Vs. Tirumalachetti Radhakrishnayya Chetty) is also distinguishable. What was observed by the Supreme Court is that when the Appellate Court affirms and agrees with the decree of Trial Court but modifies it with regard to payment of costs, that necessarily means an adjudication on the merits by the Appellate Court and it is a decree of affirmance.

66. As far as the Judgment of the learned Single Judge (unreported judgment of Mrs.N.N.Mhatre, J.) is concerned, its stay by the Appellate Court does not mean it is set aside. While agreeing with the finding on costs therein so also the observations in that behalf, I have recorded my views and observations. This is so because detailed submissions have been made before me.

67. In the light of the above observations, my conclusions are that the order dated 22nd January 1999 is capable of being enforced and executed because it is a decision on merits of the case and not hit by Explanation-II to Section 44A. Each of the objections raised by Arvind to it’s executability and enforciability fail. The order is by the Superior Court of United Kingdom. It

is only the quantification and computation of the figure of costs which is done by the authorised officer. The argument that the order is to recover Value Added Tax (VAT) is untenable. No such plea is raised in the affidavit-in-reply. No material is placed to support the oral argument. The word "Taxing of Costs" must be understood in the context of the Rules for assessment thereof prevailing in U.K.. An order of costs as understood under the civil law entitle a succeeding party to receive from the losing party the amount spent by him in prosecution of the litigation which is taxable in accordance with the provision of law applicable to that proceeding. So the term "costs" in its literal sense is limited to statutory allowances to reimburse him for expenses incurred in defending or prosecuting the proceedings. Costs are, therefore, meant to be given to a successful party to mitigate to a greater or lesser extent, the necessary expenses incurred in the conduct of litigation. The word ‘costs’ has been defined in the American Jurisprudence Second Edition Volume XX, page 5 as under :-

> " ‘Costs’ are statutory allowance to a party to an action for his expenses

> incurred in the action. They are in the nature of incidental damages allowed to the successful party to indemnify him against the expenses of asserting his rights in Court, when the necessity for so doing was caused by the other's breach of legal duty. Otherwise defined, costs are the sums prescribed by law as charges for the services enumerated in the fee bill. They have reference only to the parties and the amounts paid by them, and only those expenditures which are by statute taxable and to be included in the judgment fall within the term 'costs'.
>
> More or less the same is the definition given in Corpus Juris Secundum at page 419."
>
> (See AIR-1976-Allahabad-111 {M/s.Ganesh Das Ram Gopal Vs. The Munsif, South Lucknow and another).

The Authorised Officer was exercising powers under the Rules pertaining to assessment of costs. It cannot be confused with Assessment of Taxes by a Tax Assessor or Recovery Officer exercising powers under a Taxing Statute. Therefore, it is not possible to agree with Shri Tulzapurkar that Value Added Tax on the quantum of costs arrived at, cannot be recovered from Arvind in Execution of this Decree. The decree is not directing payment of taxes but a sum in money quantified towards costs of litigation. If upon such sum tax is payable in U.K; then, it is bound to be included in the final figure. It is an order quantifying and certifying costs. The

certificates also must be construed in this light. So construed, they cannot be termed as Tax Recovery Certificates. They contain final figure of costs of civil litigation in U.K.Court on which tax is payable under the laws prevailing in U.K.. Once, costs cannot be equated with taxes, then, the argument to exclude the figure of Value Added Tax cannot be accepted. More so considering the facts of this case. It is not in the nature of a fine or penalty or charge of like nature.

67. The order is a direct result of an adjudication between parties on a matter in controversy. Therefore, it is a judgement and decree which can be said to be conclusive and binding. Additionally, because it has gained finality.

68. In the result, Chamber Summons is made absolute in terms of prayer clause (a). The defendant Prabhudas Damodar Kotecha is granted leave to execute the judgement dated 22nd January 1999 and certificates issued in pursuance thereof by resorting to all means permissible in law including attachment and sale of movable properties of Arvind Kotecha (claimant/judgement

debtor). All objections of the claimant to executability and enforceability of the decree stand rejected. In the facts and circumstances of this case and more particularly when no injury or prejudice is caused to the claimant/judgement debtor, Leave under Order XXI, Rule 22 of CPC is dispensed with. However, in the circumstances, there will be no order as to costs.

69. At this stage Shri Munshi appearing for claimant applies for stay of this order. The same is opposed by the decree holder. In my view, all that the Chamber Summons permits is to execute the decree passed by the Foreign Country. When the decree is for payment of money and the original claimant is not willing to furnish any security, in my view, such application cannot be granted. Application for stay refused.

(S.C.DHARMADHIKARI, J.)